

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MANUEL PUENTES-GARCIA,

Defendant.

Case No. 08-cr-30181-JPG

**MEMORANDUM AND ORDER**

This matter comes before the Court on defendant Manuel Puentes-Garcia's motion for downward departure under fast-track guidelines (Doc. 27). The Court believes that, although he did not cite it in his motion, defendant intends to invoke 28 U.S.C. § 2255 because the relief he seeks is only available through such a motion. However, the Court is hesitant to construe this as a § 2255 motion without a clear indication that defendant intends to invoke § 2255. "[T]he court cannot so recharacterize a pro se litigant's motion as the litigant's first § 2255 motion unless the court informs the litigant of its intent to recharacterize, warns the litigant that the recharacterization will subject subsequent § 2255 motions to the law's 'second or successive' restrictions, and provides the litigant with an opportunity to withdraw, or to amend, the filing." *Castro v. United States*, 540 U.S. 375, 377 (2003).

The Court **WARNS** defendant that if he does not file a motion to withdraw his pending motion on or before September 10, 2012, the Court will construe it as a § 2255 motion and defendant will then be subject to the second or successive filing requirements contained in 28 U.S.C. § 2255, ¶ 8.

**IT IS SO ORDERED.**

**DATED:** August 27, 2012

s/ J. Phil Gilbert  
**J. PHIL GILBERT**  
**DISTRICT JUDGE**